IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
EASTERN DIVISION

KARI J. KATCHER, Plaintiff, vs. MICHAEL J. ASTRUE, Commissioner of Social Security, Defendant.	No. C06-2066 **RULING ON REQUEST FOR JUDICIAL REVIEW**

TABLE OF CONTENTS

I. INTRODUCTION

This matter comes before the Court on the Complaint (docket number 1) filed by Plaintiff Kari J. Katcher, requesting judicial review of the Social Security Commissioner's decision to deny her application for Title II disability insurance benefits. Katcher asks the court to reverse the decision of the Social Security Commissioner ("Commissioner") and order the Commissioner to provide her disability insurance benefits. In the alternative, Katcher requests remand for further evaluation of her claim. Finding no error in the Commissioner's decision, the court shall affirm.

II. PRIOR PROCEEDINGS

Katcher applied for disability insurance benefits on February 20, 2003, alleging an inability to work since April 25, 2000. Katcher claims that the following impairments support her application for disability insurance benefits: (1) Degenerative disc disease of the lumbar spine, (2) neurogenic bladder, (3) bilateral degenerative disc disease of her knees, (4) right foot drop, (5) left foot contracture, and (6) Raynaud's Syndrome. Katcher asserts that she is unable to work due to her impairments because after 20 minutes of sitting, she must stand and after 20 minutes of standing, she must sit. Katcher claims that this pattern repeats itself during her waking hours.

Katcher's claim was initially denied on September 22, 2003. On January 6, 2004, her application was also denied on reconsideration. On February 20, 2004, Katcher requested a hearing before an Administrative Law Judge ("ALJ"). On July 27, 2005, Katcher appeared with counsel before ALJ George Gaffaney for an evidentiary hearing. Katcher and vocational expert G. Brian Paprocki testified at the hearing. In a decision dated January 26, 2006, the ALJ denied Katcher's claim. The ALJ determined that Katcher was not disabled and was not entitled to disability insurance benefits because she was functionally capable of performing work that exists in significant numbers in the national economy. Katcher appealed the ALJ's decision. On July 27, 2006, the Appeals

Council denied Katcher's request for review. Consequently, the ALJ's January 26, 2006 decision was adopted as the Commissioner's final decision.

On September 21, 2006, Katcher filed this action for judicial review. The Commissioner filed an answer on December 1, 2006. On January 2, 2007, Katcher filed a brief arguing the ALJ made three errors in denying her claim for disability benefits. Specifically, Katcher argues that the ALJ erred by: (1) failing to consider all of her impairments, (2) failing to consider whether she met the listings, and (3) rejecting her subjective allegations. On February 28, 2007, the Commissioner filed a responsive brief arguing that the ALJ's decision was correct and asking the court to affirm his decision. On October 25, 2006, both parties consented to proceed before the undersigned in this matter pursuant to the provisions set forth in 28 U.S.C. § 636(c).

III. PRINCIPLES OF REVIEW

Title 42, United States Code, Section 405(g) provides that the Commissioner's final determination not to award disability insurance benefits following a hearing is subject to judicial review. 42 U.S.C. § 405(g). This section further provides the court with the power to: "[E]nter . . . a judgment affirming, modifying, or reversing the decision of the Commissioner of Social Security, with or without remanding the cause for a rehearing." *Id.* "The findings of the Commissioner of Social Security as to any fact, if supported by substantial evidence, shall be conclusive. . . ." *Id.*

The court must consider "whether the ALJ's decision is supported by substantial evidence on the record as a whole." *Vester v. Barnhart*, 416 F.3d 886, 889 (8th Cir. 2005) (citing *Harris v. Barnhart*, 356 F.3d 926, 928 (8th Cir. 2004)). Evidence is "substantial evidence" if a reasonable person would find it adequate to support the ALJ's determination. *Id.* (citing *Suttan v. Barnhart*, 368 F.3d 857, 862 (8th Cir. 2004)). Furthermore, "substantial evidence is 'something less than the weight of the evidence, and the possibility of drawing two inconsistent conclusions does not prevent an administrative agency's findings from being supported by substantial evidence.' " *Baldwin v. Barnhart*,

349 F.3d 549, 555 (8th Cir. 2003) (quoting *Cruse v. Bowen*, 867 F.2d 1183, 1184 (8th Cir. 1989)).

In determining whether the ALJ's decision meets this standard, the court considers "all of the evidence that was before the ALJ, but [does] not re-weigh the evidence." *Vester*, 416 F.3d at 889 (citing *Guilliams v. Barnhart*, 393 F.3d 798, 801 (8th Cir. 2005)). The court not only considers the evidence which supports the ALJ's decision, but also the evidence that detracts from his or her decision. *Guilliams*, 393 F.3d at 801. "[E]ven if inconsistent conclusions may be drawn from the evidence, the agency's decision will be upheld if it is supported by substantial evidence on the record as a whole." *Id*. (citing *Chamberlain v. Shalala*, 47 F.3d 1489, 1493 (8th Cir. 1995)).

IV. FACTS

A. Katcher's Educational and Employment Background

Katcher was born on January 5, 1966. She graduated from high school and is a registered nurse. She was a certified nurse assistant before becoming a registered nurse. Katcher held several full-time and part-time jobs from 1982 to 1989, including certified nurse assistant, kitchen help, and secretary. From 1990 to 1996, Katcher worked as a full-time certified nurse assistant or full-time registered nurse for six different hospitals or nursing homes. She was unemployed in 1997. From 1998 until her alleged disability date of April 25, 2000, Katcher was employed as a part-time registered nurse for Chautauqua Guest Home, Inc. Katcher states that she left her employment due to her health.[1] She has been unemployed since that time.

[1] Katcher's health issues at the time she quit working consisted of leg weakness, knee pain, and low back pain. She was also pregnant with her third child at that time, thereby contributing to her pain and physical limitations.

B. Testimony of Katcher and Vocational Expert

At the July 27, 2005 administrative hearing, Katcher testified that she wakes up at about 7:00 a.m. The first thing she does in the morning is her "bowel program."[2] After the bowel program, Katcher testified that she dresses herself and then sits on her bed for awhile to rest and watch the morning news. Next, she testified that she makes her bed and then heads to the kitchen to clean up any messes her children may have made during their breakfast.[3] After the children's breakfast, Katcher testified that she has them help her start the laundry and unload the dishwasher before they leave for school. Katcher testified that her children ride the bus to and from school. She testified that her afternoons were similar, except that she spends about an hour in her recliner with an ice pack. She reclines with an ice pack in the evening as well. Katcher also testified that she makes supper, shops for groceries, and drives a car.[4] She testified that she has difficulty sleeping and is awake 60 to 90 minutes most nights due to problems with her bladder.[5] Katcher testified that she does not use narcotics, but generally drinks one beer every night.

Vocational expert G. Brian Paprocki also testified at the July 27, 2005 hearing. The ALJ asked Paprocki about a hypothetical person who (1) is limited to lifting 20 pounds occasionally and has the ability to frequently lift 10 pounds, (2) can stand 30 minutes at a time for up to two hours in an eight-hour workday, (3) can sit 30 minutes at a time for up to six hours in an eight-hour workday, (4) is limited to occasional climbing of stairs and

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[2] Katcher has a dysplastic colon and must take a suppository every morning when she gets up. This program takes her about an hour every morning.

[3] Katcher has four children. At the time of the hearing, her oldest child was nine and her youngest child was three. The record indicates that Katcher's children get themselves up in the morning and make their own breakfast.

[4] She further testified that driving a car is difficult for her because of problems with her feet. She also testified that driving causes her pain under her right rib.

[5] Katcher testified that she used to be awake for two hours and thirty minutes to three hours most nights until a doctor prescribed Lexapro, an anti-depressant.

ladders, balancing, stooping, kneeling, crouching, and crawling, (5) is only occasionally exposed to hazards such as heights and moving mechanical parts, and (6) uses a cane to ambulate. Using the ALJ's hypothetical, Paprocki testified that Katcher could not perform her past relevant work; however, he testified that there were about 400 semi-skilled jobs and 3,000 sedentary jobs in Iowa which someone fitting the ALJ's hypothetical could do. These jobs included out-patient admitting clerk, checker, and sorter.

The ALJ then provided Paprocki with a second hypothetical which was identical to the first hypothetical, with the added variable that the individual would require one unscheduled break of one hour per day. Using the ALJ's second hypothetical, Paprocki testified that:

> I think someone that had to miss one hour per day on an ongoing basis is probably not going to be retained at the job. I think that's too much time to make an accommodation for and the person, I don't believe, would be able to make up the productivity missing one-eighth of the day.

Katcher's attorney also expanded on the ALJ's first hypothetical. She asked Paprocki if any jobs were available under the first hypothetical, with the additional variable that the individual could sit for 30 minutes and then have to get up and move about for 10 to 20 minutes before returning to the sitting position. Paprocki testified that, under Katcher's attorney's hypothetical, "someone could be a surveillance system monitor. The job, as long as you would be able to move to viewing of the monitors, you could be walking around, standing, or sitting."

C. Katcher's Medical History[6]

1. Treating sources.

From 1999 through 2002, Katcher saw Dr. Kevin R. Rier, M.D. for her neurogenic bladder.[7] On June 28, 1999, at her yearly bladder check-up, Dr. Rier found no new problems with her bladder. However, as a result of her condition, Dr. Rier noted that Katcher was on a two to four hour catheterization regimen. Katcher did not have her bladder checked in 2000. On August 27, 2001, Katcher had a renal ultrasound and her kidneys, ureters, and bladder X-rayed. The X-rays did not reveal any obvious abnormalities, other than some bladder wall thickening. On September 4, 2001, Katcher saw Dr. Rier for her bladder check-up. Dr. Rier noted that she had intermittent catheterization "up to 2 to 3 hours sometimes." Dr. Rier concluded that she was "doing a magnificent job of managing her neurogenic bladder." Katcher saw Dr. Rier again on September 3, 2002, and he noted that she "continues to require intermittent catheterization quite often, sometimes up to every two hours." Katcher indicated to Dr. Rier that most of her problems occurred during the day and were the result of frequent catheterizations. Dr. Rier prescribed Ditropan for Katcher and instructed her to take 5 mg every morning for the purpose of minimizing her daytime catheterizations.

On August 20, 2002, Katcher sought treatment from Dr. Jeff Nasstrom, D.O. for left hip pain. Katcher complained of pain that moved over her left hip. According to

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[6] The record contains medical documentation for Katcher from 1999 to the present. However, many of these documents refer to Katcher's involvement in a motor vehicle accident which occurred on April 9, 1994. As a result of this accident, Katcher suffered a L1 bursa fracture to her spine. Her back was surgically repaired and stabilized with screws in her T12 and L2 vertebrae. Katcher alleges that her current medical problems are the result of her 1994 accident.

[7] When the screws used to stabilize her back following the 1994 accident were removed, a screw in the L2 vertebra broke and could not be removed from her back. As a result, Katcher suffers from a neurogenic bladder. This condition causes dysfunction of the urinary bladder and is produced by a lesion of the central or peripheral nervous system.

Katcher, the pain was not constant and worsened throughout the day. Dr. Nasstrom examined Katcher and found no tenderness over her hip or thigh. Dr. Nasstrom diagnosed Katcher with a left hip strain and treated it with medication. Katcher returned to Dr. Nasstrom on November 8, 2002 with continued left hip pain. After examining her hip, Dr. Nasstrom found some tenderness over "the outer aspect." Dr. Nasstrom diagnosed her with trochanteric bursitis and continued to treat it with medication. Dr. Nasstrom also added stretching exercises as treatment.

On May 19, 2003, Katcher visited Jean A. Lunde, a physician's assistant for Dr. Nasstrom, complaining of bilateral knee pain. Katcher indicated that she noticed the pain primarily when she walked up and down stairs. She also indicated that when bending her knees, they made cracking and popping noises. Following an examination of her knees, Lunde made the following observations:

> It does appear the right knee is a little swollen as compared to the left. There is no inflamation or ecchymoses present. She has good flexion and extension. Varus and valgus testing is negative. There is popping and cracking noises with flexion and extension. Sensation and circulation is intact.

Katcher was treated with medication. Lunde also recommended ice and elevation for the swelling in her knee. Katcher returned on May 30, 2003 and visited Dr. Nasstrom for further evaluation of the pain in her knees. Katcher complained of increasing pain and discomfort in both knees. She indicated that the pain in her right knee was worse than the pain in her left knee. X-rays were taken of her knees and showed "some DJD [degenerative joint disease] over the medial aspect." Dr. Nasstrom decided to treat the pain with medication.

On October 21, 2003, Katcher visited Dr. Nasstrom complaining of a rash and discomfort in her left knee. Katcher provided Dr. Nasstrom with the following information regarding her left knee pain:

> [She] [n]otes that the pain is 5/10 day in and day out. She does use a cane due to helping with her balance. She does

> have low back pain also and unsteady gait due to her previous MVA [motor vehicle accident]. She feels the knee is doing better now that she tries to avoid walking up and down stairs. It does not lock or catch. No weakness. She has had X-rays in the past which have been negative. She is taking Tylenol Arthritis and notes that this does seem to help. She notes even with the Tylenol Arthritis it does decrease the pain down to a 2/10 and then it seems to come back again. More times than not it is a 5. It can be up to a 10 during the day.

After examining her knee, Dr. Nasstrom found full flexion and extension, no point tenderness, and no erythema. However, Dr. Nasstrom also noted that Katcher has some chronic paralysis of her left leg due to her 1994 motor vehicle accident. Dr. Nasstrom had Katcher continue taking Tylenol Arthritis and using her cane as treatment for her left knee pain.

On May 13, 2004, Katcher met with Dr. John Ebensberger, M.D. She complained of back discomfort. Upon examination, Dr. Ebensberger found the following:

> Neck supple with mild paraspinous spasm bilateral. Range of motion is minimally limited. Back shows no palpable tenderness. There is hypersensitivity around the area of L1 where she had previous surgery. . . . She is unable to walk toes, but is able to walk heels. Her gait is abnormal with loss of plantar flexion. . . . Straight leg raising is negative. . . . X rays are reviewed and show a healed fusion around L1 with a portion of a fixation screw remaining in the vertebra. . . . Cervical spine shows loss of normal curvature and straightening. X rays of the lumbar spine show an exaggerated lumbar lordosis.

Dr. Ebensberger concluded that Katcher's chronic back pain was attributable to her 1994 injury and subsequent healing. Dr. Ebensberger stated: "I think the abnormal angulation at the L1 fracture is causing both cervical and lumbar degenerative changes." Dr. Ebensberger referred Katcher to a pain specialist, Dr. Gayathry Inamdar, M.D., in order to determine treatment options for her back pain.

Katcher visited Dr. Inamdar on June 11, 2004. Katcher described her back pain to Dr. Inamdar in the following manner:

> [The] pain [is] severe, chronic, achy pain on a daily basis. She has numbness in lower back, buttock, thigh, calf and feet. Occasionally sharp, stabbing pain situated in the mid back. She has pain in the back constantly, all the time and she also notices burning pain in the back with bilateral knee pain. . . . She has pain constantly present all the time. Walking, sitting at the desk, laying on the right side, driving causes pain on the right side, going up and down the stairs is excruciating pain in both knees.

After examining Katcher, Dr. Inamdar drew the following conclusions: (1) she limps when she walks and has weakness in her right foot, (2) she has full range of motion in her neck, (3) her gait and station are somewhat impaired and unstable due to decreased sensation in both lower extremities, (4) she has full range of motion in all of her extremities,[8] (5) her spine was extremely tender throughout, (6) her pain symptoms were more on her right side than on her left side, (7) she has sharp, stabbing pains throughout the lower lumbar back, (8) she has numbness and tingling in her left hip, (9) she had a positive straight leg test with significant pain, numbness, tightness, and stiffness in her posterior thighs and lumbar back, and (10) she has decreased sensation in her lower extremity. Dr. Inamdar's treatment plan consisted of giving Katcher an epidural steroid injection and obtaining a neurology consultation. Dr. Inamdar decided not to treat Katcher with a chronic narcotic pain reliever because she was concerned that Katcher had an alcohol problem.[9]

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[8] Dr. Inamdar noted, however, that even though Katcher had a full range of motion in all of her extremities, she also had neck pain, shoulder pain, and stiffness which are all "residual pain symptoms from her previous surgery and accident."

[9] At the hearing before the ALJ, Katcher disputed having an alcohol problem. In his decision, the ALJ provided the following comments: "Dr. Inamdar made a reference to continuous alcohol use, which Ms. Katcher disputed at the hearing. Since this is the (continued…)

Katcher did not like the treatment plan proposed by Dr. Inamdar. She received another referral to a pain specialist from Dr. Ebensberger. Katcher met with Dr. W.C. Koenig, Jr., M.D. on October 18, 2004. Dr. Koenig diagnosed her with myofascial pain syndrome. The record is not entirely clear, but it appears that Dr. Koenig's suggested treatment for Katcher's pain was physical therapy.

Katcher returned to Dr. Ebensberger for right knee pain on May 3, 2005. She complained of swelling in her right knee and pain when she walked up and down stairs. She also informed Dr. Ebensberger that Ibuprofrin and Aleve did not help the pain. Dr. Ebensberger concluded she suffered from right knee retropatellar pain syndrome. Dr. Ebensberger placed Katcher in a knee immobilizer and prescribed Voltarin as pain medication for her knee. On May 17, 2005, Katcher returned for a follow-up appointment and the pain in her right knee had improved. Dr. Ebensberger kept her on Voltarin for the pain.

Dr. Nasstrom and Physician's Assistant Jean Lunde provided letters assessing Katcher's pain and functional capacity to Disability Determination Services ("DDS") in December, 2003. Lunde's letter provided that Katcher:

> has had chronic back pain since 1994 when she was involved in a motor vehicle accident. That accident resulted in a L1 burst fracture that was repaired but has left her with partial paralysis in both lower extremities. She walks with an abnormal gait and a dropped right foot. She has difficulty with her balance and needs to use a cane. She also has a neurogenic bladder and as a result has to catheterize herself. She has decreased range of motion in her spine, paraesthesias in her leg along with pain in her legs and lower back. The pain is continuous. She is unable to sit or stand in one position for greater than 30 minutes and it would be difficult for her to travel more than 30 miles because of pain and decreased range

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[9](…continued)
only mention in the record of any substance abuse issue, the undersigned finds it to be suspect and will accept Ms. Katcher's testimony in this regard."

> of motion in her back. She could not lift more than 20 pounds at one time because of the pain in her back and weakness in both lower extremities. She has also been experiencing Raynaud's syndrome during the winter months following her accident. It would be very difficult for her to do any regular employment even though she is an R.N.

Dr. Nasstrom's letter provided that he had treated Katcher for:

> chronic pain. Patient does take pain medication on a regular basis for upper back and neck pain. She does have difficulty with her balance and subsequently has had to use a cane. Due to her discomfort in her back, she does keep active and this seems to help with the discomfort but she has difficulty with sitting for extended periods of time. Usually after 30 minutes she has to get up and walk. This also causes discomfort when driving. She does have discomfort with ambulating due to pain in her lower extremities and also has difficulty due to the symptoms of Raynaud's especially during the winter months. This seems to have worsened since her accident.

2. Consulting sources.

On August 5, 2003, Katcher was examined by Dr. David G. Schweizer, M.D. at the request of DDS. Dr. Schweizer determined that Katcher had the following physical limitations: (1) she could only stand for 10 minutes, (2) she could walk no further than 100 yards, (3) she could not sit for longer than 1 hour, (4) she has difficulty stooping, climbing, kneeling, and crawling, (5) back pain makes traveling difficult, (6) she cannot sit and watch a 1 hour television program, and (7) she does not attend movies because she cannot sit for the length of a movie. Dr. Schweizer found further limitations:

> Passive range of motion is almost normal, but she has sensory loss both right and left legs, most the right lower leg numb. She has reflex loss in the Achille's tendon. Mild weakness in the thighs, but dramatic weakness on the dorsi-flexion and plantar flexion. She is able to heel walk. Dorsi-flexing her foot she is unable to toe walk because she has no calf strength and no plantar flexion. The right side is much weaker than the left, but both sides are involved. Her gait is broad based, light limp favoring the weak right side. Does seem to have pain

> with walking, demonstrating painful antalgic gait. She walks with a cane. She is unable to sit for extended periods of time, nor can she sit or walk.

Dr. Schweizer noted that she has a neurogenic bladder which requires self-catheterization 10-12 times per day as needed. Dr. Schweizer also noted Katcher's spastic colon which requires her to use a suppository for her bowel movements. Dr. Schweizer indicated that he visited with Katcher "about job training since she is unable to stand, walk or lift. She says sitting for any length of time is not comfortable either, but at home she will move from sitting to standing and standing to sitting." Dr. Schweizer suggested she talk to her case worker about finding a position which would allow her to change sitting and standing positions as often as needed. Finally, Dr. Schweizer found the weakness and numbness in Katcher's feet and legs puzzling and the pattern of motor and sensory loss peculiar. Dr. Schweizer recommended neurological testing and additional studies on her back or neurosurgery.

On September 18, 2003, a residual functional capacity ("RFC") assessment was performed on Katcher by a DDS physician.[10] The physician reviewed Katcher's medical records and made the following assessment: (1) she could occasionally lift 20 pounds and frequently lift 10 pounds, (2) she could stand and/or walk with normal breaks at least two hours in an eight-hour workday, (3) she could sit with normal breaks for a total of about six hours in an eight-hour workday, (4) she was unlimited in her ability to push and/or pull a moving device, and (5) she could occasionally climb, balance, stoop, kneel, crouch, and crawl. The DDS physician noted that Katcher's description of her typical day was very full. "She cares for her 4 children under 7. She cooks, shops, and runs errands and to kid's activities. She does household chores, although she notes accommodations with some of these, including using a quad cane to vacuum." Based on her daily activities, the DDS

[10] The name of the DDS physician who performed Katcher's RFC is not printed in the record and his or her signature is illegible.

physician concluded that Katcher could not sustain six hours of walking or standing during an eight-hour workday; however, she could sustain two hours of standing or walking in that time frame. The DDS physician also noted that even though Katcher must catheterize herself up to every two hours, she could still maintain a job which had a routine break schedule of every two hours.

3. Other sources.

The record provides that from October, 2003 through July 15, 2005, Katcher periodically visited Slinger Chiropractic, P.C. and was treated by Dr. Anthony G. Slinger, D.C. In a letter dated November 14, 2003, Dr. Slinger provided an assessment of Katcher's functional capabilities. Dr. Slinger diagnosed Katcher with abnormal gait, and a "drop-foot-like" gait on her right side. Dr. Slinger concluded that:

> Katcher has limited range of motion in the lumbar spine, poor gait, neurogenic bladder and parasthesia down both legs. She cannot lift more than 20 pounds for any length of time. She should not be bending, twisting, or turning. Standing, walking and sitting can be accomplished, but those postures should be changed every ½ hour. Stooping, climbing, kneeling and crawling are not recommended. . . .

V. CONCLUSIONS OF LAW

A. ALJ's Disability Determination

The ALJ determined that Katcher is not disabled. In making this determination, the ALJ was required to complete the five-step sequential test provided in the social security regulations. *See* 20 C.F.R. § 404.1520(a)-(f); *Bowen v. Yuckert*, 482 U.S. 137, 140 (1987); *Anderson v. Barnhart*, 344 F.3d 809, 812 (8th Cir. 2003). The five steps an ALJ must consider are:

> (1)[W]hether the claimant is gainfully employed, (2) whether the claimant has a severe impairment, (3) whether the impairment meets the criteria of any Social Security Income listings, (4) whether the impairment prevents the claimant from performing past relevant work, and (5) whether the impairment necessarily prevents the claimant from doing any other work.

Goff v. Barnhart, 421 F.3d 785, 790 (8th Cir. 2005) (citing *Eichelberger v. Barnhart*, 390 F.3d 584, 590 (8th Cir. 2004)); *see also* 20 C.F.R. 404.1520(a)-(f). "If a claimant fails to meet the criteria at any step in the evaluation of disability, the process ends and the claimant is determined to be not disabled." *Eichelberger*, 390 F.3d at 590-91 (citing *Ramirez v. Barnhart*, 292 F.3d 576, 580 (8th Cir. 2002)).

"To establish a disability claim, the claimant bears the initial burden of proof to show that he [or she] is unable to perform his [or her] past relevant work." *Frankl v. Shalala*, 47 F.3d 935, 937 (8th Cir. 1995) (citing *Reed v. Sullivan*, 988 F.2d 812, 815 (8th Cir. 1993)). If the claimant meets this burden, the burden of proof then shifts to the Commissioner to demonstrate that the claimant retains the residual functional capacity ("RFC") to perform a significant number of other jobs in the national economy that are consistent with claimant's impairments and vocational factors such as age, education, and work experience. *Id*. The RFC is the most an individual can do despite the combined effect of all of their credible limitations. 20 C.F.R. § 416.945. "It is the ALJ's responsibility to determine a claimant's RFC based on all relevant evidence, including medical records, observations of treating physicians and others, and claimant's own descriptions of his [or her] limitations." *Tellez v. Barnhart*, 403 F.3d 953, 957 (8th Cir. 2005) (quoting *Pearsall v. Massanari*, 274 F.3d 1211, 1217 (8th Cir. 2001)).

The ALJ applied the first step of this analysis and determined that Katcher had not engaged in substantial gainful activity since her alleged disability onset date of April 25, 2000. At the second step, the ALJ concluded from the medical evidence, that Katcher had the following severe impairments:

> L1 burst fracture, degenerative disc disease of the lumbar spine, neurogenic bladder, bilateral degenerative disc disease of the knees, right foot drop, left foot contracture, and Raynaud's syndrome.

At the third step, the ALJ found that Katcher's "impairments do not meet or equal in severity the requirements of any impairment set out in Appendix 1, Subpart P, Regulations No. 4 (the Listing of Impairments)."

Katcher disputes the ALJ's determination at step three, and argues that she meets Listings 1.03 and 1.04. The Commissioner contends that the medical evidence does not establish the required criteria of Listing 1.03 and 1.04. Accordingly, the Commissioner asserts that substantial evidence supports the ALJ's finding that her impairments do not meet the listing criteria and Katcher cannot meet her burden.

At step three, the burden is on the claimant to show that his or her impairment matches a listing and meets all of the specified medical criteria of that particular listing. *Marciniak v. Shalala*, 49 F.3d 1350, 1353 (8th Cir. 1995); *see also Sullivan v. Zebley*, 493 U.S. 521, 530 (1990) ("For a claimant to show that his [or her] impairment matches a listing, it must meet *all* of the specified medical criteria."). The ALJ did not address the specific listings that Katcher claims she meets. An ALJ's failure to address a specific listing, is not reversible error if the record supports his or her overall conclusion. *Pepper ex rel. Gardner v. Barnhart*, 342 F.3d 853, 855 (8th Cir. 2003).

Listing 1.03 applies to the evaluation of "[r]econstructive surgery or surgical arthrodesis of a major weight-bearing joint with inability to ambulate effectively, . . . and return to effective ambulation did not occur, or is not expected to occur, within 12 months of onset." 20 C.F.R. pt. 404, subpt. P, app. 1, § 1.03. The inability to ambulate effectively is defined as "an extreme limitation of the ability to walk. . . . Ineffective ambulation is defined generally as having insufficient lower extremity functioning to permit independent ambulation without the use of a hand-held device(s) that limits the functioning of both upper extremities." 20 C.F.R. pt. 404, subpt. P, app. 1, § 1.00(B)(*2*)(*b*)(1). "[E]xamples of ineffective ambulation include, but are not limited to, the inability to walk without the use of a walker, two crutches, or *two* canes." *Id.* at § 1.00(B)(*2*)(*b*)(2) (emphasis added). It is undisputed that Katcher uses one cane for ambulation. However,

the functioning of both of Katcher's upper extremities are not limited because she does not use two canes to help her walk. Furthermore, Katcher has not had reconstructive surgery or surgical arthrodesis on a major weight-bearing joint causing her the inability to ambulate effectively. Accordingly, the Court determines that Katcher does not meet the definition of "ineffective ambulation" or the criteria of Listing 1.03. Therefore, the Court finds substantial evidence to support the ALJ's finding that Katcher does not meet the criteria of Listing 1.03.

Listing 1.04 concerns disorders of the spine or spinal chord, with:

> A. Evidence of nerve root compression characterized by neuro-anatomic distribution of pain, limitation of motion of the spine, motor loss accompanied by sensory or reflex loss and, if there is involvement of the lower back, positive straight-leg raising test;
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> or
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> B. Spinal arachnoiditis . . .
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> or
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> C. Lumbar spinal stenosis resulting in pseudoclaudication, established by findings on appropriate medically acceptable imaging, manifested by chronic nonradicular pain and weakness, and resulting in inability to ambulate effectively. . . .

20 C.F.R. pt. 404, subpt. P, app. 1, § 1.04. There is no evidence in the record indicating that Katcher meets any of the specified criteria in Listing 1.04. Therefore, the Court determines that there is substantial evidence in the record to support the ALJ's finding that Katcher does not meet the criteria of Listing 1.04.

At the fourth step, the ALJ determined Katcher's RFC as follows:

> As a result of her impairments, Ms. Katcher could lift 20 pounds occasionally and 10 pounds more frequently. She is able to stand 30 minutes at a time for a total of two hours out of an eight-hour workday. She can sit for 30 minutes at a time

> for up to six hours out of an eight-hour workday. She should avoid frequent exposure to extremely cold conditions and occupational hazards. The claimant can occasionally climb stairs, climb ladders, balance, stoop, kneel, crouch, and crawl. She uses a cane to ambulate.

Using this RFC, the ALJ determined that Katcher met her burden of proof at the fourth step, because she is unable to perform her past relevant work. However, at the fifth step, the ALJ determined that Katcher, based on her age, education, previous work experience, and RFC, could work at jobs that exist in significant numbers in the national economy; including outpatient admitting clerk, records reviewer, checker, and sorter. Therefore, the ALJ concluded Katcher was "not disabled."

B. Katcher's Residual Functional Capacity

Katcher argues that the ALJ erred in making her RFC determination because he failed to consider all of her impairments. Specifically, Katcher argues that the ALJ should have considered her need for additional breaks during an eight-hour workday and other complications which arise due to her neurogenic bladder. Katcher also contends that the ALJ failed to properly evaluate the credibility of her subjective complaints of pain. Thus, Katcher asserts that the ALJ's assessment of her RFC was not supported by substantial evidence. The Commissioner argues that, after considering all of the relevant evidence, including medical records, observations of treating physicians and others, and Katcher's own description of her limitations, the ALJ properly evaluated the medical opinion evidence, properly assessed the credibility of Katcher's subjective complaints, and properly determined Katcher's RFC.

1. Consideration of Katcher's impairments.

Katcher argues that the medical evidence suggests that the ALJ should have considered the effect of her neurogenic bladder on her ability to maintain employment. Katcher points out that her treating physicians, Drs. Rier, Nasstrom, and Ebensberger, acknowledged her difficulty with her neurogenic bladder and her need to catheterize herself multiple times each day. Katcher also points out that the consulting physicians,

Dr. Schweizer and the DDS physician, also both acknowledged her neurogenic bladder and her need to self-catheterize multiple times throughout the day. Katcher maintains that the ALJ erred in making his RFC determination because he "acknowledges that the neurogenic bladder is a severe impairment, but does not mention why he did not consider [her] need for additional breaks in the [RFC]." The Commissioner replies that there is credible and substantial evidence in the record which supports the ALJ's RFC assessment. The Commissioner contends that the ALJ's RFC is consistent with the opinions of Katcher's treating and consulting physicians. Specifically, the Commissioner points out that "no physician has opined that [Katcher's] need for catheterization, 'sometimes' as frequent as every 2 hours, would result in any functional limitations, and [Katcher's] bowel condition has not changed since the 1994 accident, after which she was gainfully employed for several years."

An ALJ has the responsibility of assessing a claimant's RFC, and his or her assessment must be based on all of the relevant evidence. *Guilliams v. Barnhart*, 393 F.3d 798, 803 (8th Cir. 2005); *see also Roberts v. Apfel*, 222 F.3d 466, 469 (8th Cir. 2000) (same). Relevant evidence for determining a claimant's RFC includes "'medical records, observations of treating physicians and others, and an individual's own description of his [or her] limitations.'" *Lacroix v. Barnhart*, 465 F.3d 881, 887 (8th Cir. 2006) (quoting *Strongson v. Barnhart*, 361 F.3d 1066, 1070 (8th Cir. 2004)). However, "RFC is a medical question, and an ALJ's finding must be supported by some medical evidence." *Guilliams*, 393 F.3d at 803 (citing *Masterson v. Barnhart*, 363 F.3d 731, 738 (8th Cir. 2004)).

The ALJ's RFC assessment for Katcher limited her to:

> lift[ing] 20 pounds occasionally and 10 pounds more frequently. She is able to stand 30 minutes at a time for a total of two hours out of an eight-hour workday. She can sit for 30 minutes at a time for up to six hours out of an eight-hour workday. She should avoid frequent exposure to extremely cold conditions and occupational hazards. The claimant can

> occasionally climb stairs, climb ladders, balance, stoop, kneel, crouch, and crawl. She uses a cane to ambulate.

Katcher's treating physician, Dr. Nasstrom, noted that she requires a cane for ambulation. Dr. Nasstrom also opined that Katcher could sit for approximately 30 minutes before needing to get up and walk. Jean Lunde, a physician's assistant who also treated Katcher, noted that she used a cane. Lunde opined that Katcher could not sit or stand in one position for longer than 30 minutes. Lunde also opined that she could not lift more than 20 pounds. Dr. Slinger, Katcher's chiropractor, also opined that she could not lift more than 20 pounds. Dr. Slinger noted that "standing, walking and sitting can be accomplished, but those postures should be changed every ½ hour." Dr. Schweizer, an examining consulting physician, determined that Katcher could not sit for longer than one hour. Dr. Schweizer opined that she had difficulty stooping, climbing, kneeling, and crawling. Dr. Schweizer also noted that Katcher uses a cane. Finally, a consulting DDS physician provided the following RFC assessment: (1) she could occasionally lift 20 pounds and frequently lift 10 pounds, (2) she could stand and/or walk with normal breaks at least two hours in an eight-hour workday, (3) she could sit with normal breaks for a total of about six hours in an eight-hour workday, (4) she was unlimited in her ability to push and/or pull a moving device, and (5) she could occasionally climb, balance, stoop, kneel, crouch, and crawl. Additionally, Jean Lunde, Dr. Slinger, Dr. Schweizer, and the DDS physician all noted that Katcher has a neurogenic bladder which requires self-catheterization multiple times per day; however, none of them suggested that this condition created any functional limitations.

The Court finds that the ALJ considered all of the relevant evidence for assessing Katcher's RFC, including the medical records of her treating and consulting sources. The ALJ's RFC for Katcher is consistent with the opinions of her treating and consulting doctors and other sources, and is supported by substantial evidence. The Court upholds the RFC assessment of the ALJ because it is supported by substantial evidence on the record as a whole.

2. Credibility determination.

An ALJ is required to make a credibility determination prior to making his or her RFC determination. *Tellez v. Barnhart*, 403 F.3d 953, 957 (8th Cir. 2005). Katcher argues that the ALJ improperly rejected her subjective complaints of pain and limited activities. The Commissioner argues that the ALJ properly found Katcher's complaints not credible by following the framework set forth in *Polaski v. Heckler*, 739 F.2d 1320 (8th Cir. 1984), and the regulations at 20 C.F.R. § 404.1529.

When evaluating the credibility of a claimant's subjective complaints, the ALJ may not disregard them "solely because the objective medical evidence does not fully support them." *Polaski*, 739 F.2d at 1322. However, the absence of objective medical evidence to support a claimant's subjective complaints is a relevant factor for an ALJ to consider. *Gowell v. Apfel*, 242 F.3d 793, 796 (8th Cir. 2001) (citation omitted). "The [ALJ] must give full consideration to all the evidence presented relating to subjective complaints, including the claimant's prior work record, and observations by third parties and treating and examining physicians relating to such matters as: (1) the claimant's daily activities; (2) the duration, frequency, and intensity of the pain; (3) precipitating and aggravating factors; (4) dosage, effectiveness and side effects of medication; [and] (5) functional restrictions." *Id*. Subjective complaints may be discounted if inconsistencies exist in the evidence as a whole. *Pelkey v. Barnhart*, 433 F.3d 575, 578 (8th Cir. 2006) (citing *Polaski*, 739 F.2d at 1322). However, the ALJ must give reasons for discrediting the claimant. *Pelkey*, 433 F.3d at 578 (citing *Strongson*, 361 F.3d at 1072). Where an ALJ seriously considers, but for good reason explicitly discredits a claimant's subjective complaints, the court will not disturb the ALJ's credibility determination. *Johnson v. Apfel*, 240 F.3d 1145, 1148 (8th Cir. 2001) (citing *Pena v. Chater*, 76 F.3d 906, 908 (8th Cir. 1996)); *see also Guilliams*, 393 F.3d at 801 (explaining that deference to an ALJ's credibility determination is warranted if the determination is supported by good reasons and substantial evidence); *Eichelberger v. Barnhart*, 390 F.3d 584, 590 (8th Cir. 2004)

(The reviewing court should not substitute its opinion "for that of the ALJ, who is in a better position to assess credibility); and *Brown v. Chater*, 87 F.3d 963, 966 (8th Cir. 1996) (same).

In finding Katcher's allegation of total disability to be not credible, the ALJ determined, on the record as a whole, that her full activities of daily living were inconsistent with her subjective complaints of pain and limited activities. Specifically, the ALJ made the following findings based on his application of the *Polaski* factors: (1) Katcher gave birth to two children since her alleged disability onset date of April 25, 2000; (2) at the hearing, Katcher claimed that she quit her job due to disabling back pain, however, in her undated "Disability Report,"[11] she states that she stopped working due to her pregnancy because she was "unable to be on [her] feet and complete [her] job with weight on her legs; (3) she currently maintains her household and cares for four children under the age of nine; (4) although she has limitations as a result of her 1994 accident, she was able to work subsequent to the accident, (5) she is "able to drive, do laundry, cook meals, grocery shop, and vacuum while using a quad cane;" and (6) she takes prescription medications appropriate for her medical conditions, but any side effects from her medications would not impact her ability to work. Based on these findings, the ALJ concluded that "[t]he allegations of the claimant could not be afforded full credibility due to the numerous inconsistencies in the record as a whole." The record supports the ALJ's conclusion that inconsistencies between Katcher's subjective complaints and her daily activities diminish her credibility. *See Choate v. Barnhart*, 457 F.3d 865, 871 (8th Cir. 2006) (an ALJ may consider daily activities inconsistent with complaints of daily pain when making a credibility determination); *Riggins v. Apfel*, 177 F.3d 689, 693 (8th Cir. 1999) (same); *Haynes v. Shalala*, 26 F.3d 812, 815 (8th Cir. 1994) ("[D]aily activities that

[11] *See* Exhibit 11E at p. 2 in the record.

are inconsistent with complaints of disabling pain also provide a basis for discounting subjective complaints.").

The Court finds that the ALJ properly discounted Katcher's complaints because there were significant inconsistencies in the evidence as a whole and she properly gave reasons for discrediting Katcher. *Pelkey*, 433 F.3 at 578. Therefore, the court will not disturb the ALJ's credibility determination. *Johnson v. Apfel*, 240 F.3d at 1147. After considering the weight of the evidence and balancing the factors supporting the ALJ's credibility determination against the factors in support of Katcher's claim, the court finds that the ALJ's determination that Katcher's allegation of total disability was not credible is supported by substantial evidence.

VI. CONCLUSION

The court concludes that the ALJ considered all of the relevant evidence in this case, including the medical records of Katcher's treating, examining, and evaluating sources and Katcher's own description of her conditions. *See Tellez*, 403 F.3d at 957. The ALJ's determination of Katcher's RFC is consistent with the opinions of Katcher's treating and consulting doctors and other sources, and is supported by his finding that Katcher was not fully credible. The ALJ's determination of the RFC is supported by substantial evidence. The ALJ's conclusion, based on Katcher's age, education, previous work experience, and RFC, that she could work at jobs that exist in significant numbers in the national economy is also supported by substantial evidence. Accordingly, the decision of the Commissioner of Social Security shall be affirmed.

VII. ORDER

IT IS THEREFORE ORDERED as follows:

(1) The final decision of the Commissioner of Social Security is **AFFIRMED**;

(2) Plaintiff's Complaint (docket number 1) is **DISMISSED** with prejudice; and

(3) The Clerk of Court is directed to enter judgment accordingly.

DATED this 6th day of June, 2007.

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JON STUART SCOLES
United States Magistrate Judge
NORTHERN DISTRICT OF IOWA